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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-294

13 **PATRICK ALLAN EUBANKS**  
14 **133 10th Street, Unit 2**  
15 **Seal Beach, CA 90740**

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

**Registered Nurse License No. 770256**

Respondent.

16  
17 **FINDINGS OF FACT**

18 1. On or about October 15, 2012, Complainant Louise R. Bailey, M.Ed., R.N., in her  
19 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
20 Consumer Affairs, filed Accusation No. 2013-294 against Patrick Allan Eubanks (Respondent)  
21 before the Board of Registered Nursing. (The Accusation is attached as Exhibit A.)

22 2. On or about March 11, 2010, the Board of Registered Nursing (Board) issued  
23 Registered Nurse License No. 770256 to Respondent. The Registered Nurse License was in full  
24 force and effect at all times relevant to the charges brought in Accusation No. 2013-294 and will  
25 expire on April 30, 2013, unless renewed.

26 3. On or about October 15, 2012, Respondent was served by Certified and First Class  
27 Mail copies of the Accusation No. 2013-294, Statement to Respondent, Notice of Defense,  
28 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,

1 and 11507.7) at Respondent's address of record which, pursuant to California Code of  
2 Regulations, title 16, section 1409.1, is required to be reported and maintained with the Board.  
3 Respondent's address of record was and is:

4 133 10th Street, Unit 2  
5 Seal Beach, CA 90740

6 4. Service of the Accusation was effective as a matter of law under the provisions of  
7 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
8 124.

9 5. Government Code section 11506 states, in pertinent part:

10 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
11 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
12 of the accusation not expressly admitted. Failure to file a notice of defense shall  
constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
may nevertheless grant a hearing.

13 6. Respondent failed to file a Notice of Defense within 15 days after service upon him  
14 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
15 2013-294.

16 7. California Government Code section 11520 states, in pertinent part:

17 (a) If the respondent either fails to file a notice of defense or to appear at the  
18 hearing, the agency may take action based upon the respondent's express admissions  
19 or upon other evidence and affidavits may be used as evidence without any notice to  
respondent.

20 8. Pursuant to its authority under Government Code section 11520, the Board finds  
21 Respondent is in default. The Board will take action without further hearing and, based on the  
22 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
23 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
24 file at the Board's offices regarding the allegations contained in Accusation No. 2013-294, finds  
25 that the charges and allegations in Accusation No. 2013-294, are separately and severally, found  
26 to be true and correct by clear and convincing evidence.

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1           9.     Taking official notice of its own internal records, pursuant to Business and  
2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
3 and Enforcement is \$702.50 as of November 19, 2012.

4                                   **DETERMINATION OF ISSUES**

5           1.     Based on the foregoing findings of fact, Respondent Patrick Allan Eubanks has  
6 subjected his Registered Nurse License No. 770256 to discipline.

7           2.     The agency has jurisdiction to adjudicate this case by default.

8           3.     The Board of Registered Nursing is authorized to revoke Respondent's Registered  
9 Nurse License based upon the following violation alleged in the Accusation which is supported  
10 by the Default Decision Investigatory Evidence Packet in this case:

11                   Respondent has subjected his license to disciplinary action under section 2762,  
12 subdivision (a) of the Code in that he possessed the controlled substance cocaine on June 1, 2011.

13           ///

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15           ///

ORDER

IT IS SO ORDERED that Registered Nurse License No. 770256, heretofore issued to Respondent Patrick Allan Eubanks, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on MARCH 29, 2013.

It is so ORDERED FEBRUARY 27, 2013.

  
FOR THE BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS

DOJ Matter ID: SD2012703897

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
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2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 State Bar No. 101336  
AMANDA DODDS  
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*Attorneys for Complainant*

9 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No: 2013-294

13 **PATRICK ALLAN EUBANKS**  
14 **133 10th Street, Unit 2**  
**Seal Beach, CA 90740**

**A C C U S A T I O N**

15 **Registered Nurse License No. 770256**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
22 Consumer Affairs.

23 2. On or about March 11, 2010, the Board of Registered Nursing issued Registered  
24 Nurse License Number 770256 to Patrick Allan Eubanks (Respondent). The Registered Nurse  
25 License was in full force and effect at all times relevant to the charges brought herein and will  
26 expire on April 30, 2013, unless renewed.

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28 ///

## JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

## STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct,

1 notwithstanding that evidence of that misconduct may be recorded in a record  
2 pertaining to an arrest.

3 This section shall not be construed to apply to any drug diversion program  
4 operated by any agency established under Division 2 (commencing with Section 500)  
5 of this code, or any initiative act referred to in that division.

6 9. Section 493 of the Code states:

7 Notwithstanding any other provision of law, in a proceeding conducted by a  
8 board within the department pursuant to law to deny an application for a license or to  
9 suspend or revoke a license or otherwise take disciplinary action against a person who  
10 holds a license, upon the ground that the applicant or the licensee has been convicted  
11 of a crime substantially related to the qualifications, functions, and duties of the  
12 licensee in question, the record of conviction of the crime shall be conclusive  
13 evidence of the fact that the conviction occurred, but only of that fact, and the board  
14 may inquire into the circumstances surrounding the commission of the crime in order  
15 to fix the degree of discipline or to determine if the conviction is substantially related  
16 to the qualifications, functions, and duties of the licensee in question.

17 As used in this section, "license" includes "certificate," "permit," "authority,"  
18 and "registration."

19 10. Section 2761 of the Code states:

20 The board may take disciplinary action against a certified or licensed nurse or  
21 deny an application for a certificate or license for any of the following:

22 (a) Unprofessional conduct, which includes, but is not limited to, the  
23 following:

24 . . . .

25 (f) Conviction of a felony or of any offense substantially related to the  
26 qualifications, functions, and duties of a registered nurse, in which event the record of  
27 the conviction shall be conclusive evidence thereof.

28 . . . .

11. Section 2762 of the Code states:

In addition to other acts constituting unprofessional conduct within the meaning  
of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person  
licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by  
a licensed physician and surgeon, dentist, or podiatrist administer to himself or  
herself, or furnish or administer to another, any controlled substance as defined in  
Division 10 (commencing with Section 11000) of the Health and Safety Code or any  
dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with  
Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous  
device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner



1 dangerous or injurious to himself or herself, any other person, or the public or to the  
2 extent that such use impairs his or her ability to conduct with safety to the public the  
practice authorized by his or her license.

3 (c) Be convicted of a criminal offense involving the prescription, consumption,  
4 or self-administration of any of the substances described in subdivisions (a) and (b) of  
this section, or the possession of, or falsification of a record pertaining to, the  
5 substances described in subdivision (a) of this section, in which event the record of  
the conviction is conclusive evidence thereof.

6 . . . .

7 12. Section 2765 of the Code states:

8 A plea or verdict of guilty or a conviction following a plea of nolo contendere  
9 made to a charge substantially related to the qualifications, functions and duties of a  
registered nurse is deemed to be a conviction within the meaning of this article. The  
10 board may order the license or certificate suspended or revoked, or may decline to  
issue a license or certificate, when the time for appeal has elapsed, or the judgment of  
11 conviction has been affirmed on appeal or when an order granting probation is made  
suspending the imposition of sentence, irrespective of a subsequent order under the  
12 provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his  
or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of  
13 guilty, or dismissing the accusation, information or indictment.

#### 14 REGULATORY PROVISIONS

15 13. California Code of Regulations, title 16, section 1444, states:

16 A conviction or act shall be considered to be substantially related to the  
17 qualifications, functions or duties of a registered nurse if to a substantial degree it  
evidences the present or potential unfitness of a registered nurse to practice in a  
18 manner consistent with the public health, safety, or welfare. Such convictions or acts  
shall include but not be limited to the following:

19 (a) Assaultive or abusive conduct including, but not limited to, those violations  
20 listed in subdivision (d) of Penal Code Section 11160.

21 (b) Failure to comply with any mandatory reporting requirements.

22 (c) Theft, dishonesty, fraud, or deceit.

23 (d) Any conviction or act subject to an order of registration pursuant to Section  
290 of the Penal Code.

24 14. California Code of Regulations, title 16, section 1445 states:

25 . . . .

26 (b) When considering the suspension or revocation of a license on the grounds  
27 that a registered nurse has been convicted of a crime, the board, in evaluating the  
rehabilitation of such person and his/her eligibility for a license will consider the  
28 following criteria:

- 1 (1) Nature and severity of the act(s) or offense(s).
- 2 (2) Total criminal record.
- 3 (3) The time that has elapsed since commission of the act(s) or offense(s).
- 4 (4) Whether the licensee has complied with any terms of parole, probation,  
5 restitution or any other sanctions lawfully imposed against the licensee.
- 6 (5) If applicable, evidence of expungement proceedings pursuant to Section  
1203.4 of the Penal Code.
- 7 (6) Evidence, if any, of rehabilitation submitted by the licensee.

8 **COSTS**

9 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
10 administrative law judge to direct a licensee found to have committed a violation or violations of  
11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
12 enforcement of the case.

13 **DRUG**

14 16. Cocaine is a Schedule II controlled substance as designated by Health and Safety  
15 Code section 11055, subdivision (b)(6), and is a dangerous drug pursuant to Business &  
16 Professions Code section 4022.

17 **CAUSE FOR DISCIPLINE**

18 **(Possession of Cocaine on June 1, 2011)**

19 17. Respondent has subjected his license to disciplinary action under section 2762,  
20 subdivision (a) of the Code in that he possessed the controlled substance cocaine on June 1, 2011.  
21 The circumstances are as follows:

22 a. The Narcotics Enforcement Section of the Long Beach Police Department had  
23 been conducting an ongoing investigation into complaints of narcotics sales. Over a period of  
24 one month, undercover officers conducted surveillance and made purchases of cocaine from a  
25 suspect. On the afternoon of June 1, 2011, officers observed Respondent parked in an alley  
26 behind the suspect's apartment building. The suspect approached Respondent's vehicle, reached  
27 through the open front passenger window and handed something to Respondent in exchange for  
28 an unknown item. Respondent drove away. Assisting patrol units in the area were notified and

Respondent was stopped a short distance away. After being questioned by officers, Respondent eventually admitted that he had purchased cocaine from the suspect and had placed it in the center console of his vehicle. The officers retrieved three rock-like substances that subsequently tested positive for cocaine. Respondent was arrested. During post-*Miranda* questioning, Respondent told the officer that he purchased the cocaine from the suspect for \$30. When asked if he had been arrested for possession of cocaine in the past, Respondent stated "Yeah, I got diversion."

b. As a result of the arrest, on or about June 20, 2011, in a criminal proceeding entitled *People of the State of California v. Patrick Eubanks*, in Los Angeles County Superior Court, case number NA089106, Respondent pled guilty to violating Health and Safety Code section 11350, subdivision (a), possession of a controlled substance, a felony.

c. As a result of the plea, on or about June 20, 2011, the court deferred entry of judgment for 18 months and Respondent was placed on diversion pursuant to Penal Code section 1000.1. Respondent was ordered not to use or possess any narcotics, dangerous or restricted drugs or associated paraphernalia, to stay away from places where users, buyers, or seller congregate, and not associate with known drug users. Respondent was required to complete an approved controlled substance treatment program. At a hearing on January 27, 2012, Respondent was allowed to withdraw his plea of guilty, and the case was dismissed pursuant to Penal Code section 1000.3.

### **DISCIPLINARY CONSIDERATIONS**

18. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant to California Code of Regulations, title 16, section 1445, subdivision (b), Complainant alleges the following:

a. On or about the evening of March 16, 2004, patrol officers with the Los Angeles Police Department conducted an enforcement stop on Respondent after he was observed driving away from an establishment known for narcotic sales. The officers obtained consent to search the vehicle. Inside the vehicle's center console, the officers found a white plastic bindle containing .29 grams of an off-white, rock-like substance resembling rock cocaine. In a post-*Miranda* interview, Respondent admitted that he had used cocaine in the past, but denied that the

1 cocaine found in his vehicle belonged to him. In Respondent's written statement provided to the  
2 officers, he stated "I do not use drugs, and I am very aware of the dangers they bring and would  
3 never put myself in this position knowingly. I HAVE NEVER BEEN ARRESTED FOR DRUGS  
4 nor any serious matter. I am a law abiding citizen." (Emphasis in original.) Respondent was  
5 arrested for possession of a controlled substance.

6 b. As a result of the arrest, on or about April 26, 2004, in a criminal proceeding  
7 entitled *People of the State of California v. Patrick Allan Eubanks*, in Los Angeles County  
8 Superior Court, case number LA045516, Respondent pled guilty to violating Health and Safety  
9 Code section 11350, subdivision (a), possession of a controlled substance. As a result of the plea,  
10 the court placed Respondent in a deferred entry of judgment program for 36 months pursuant to  
11 Penal Code section 1000.2. Respondent was ordered not to use or possess any narcotics,  
12 dangerous or restricted drugs or associated paraphernalia, to stay away from places where users,  
13 buyers, or seller congregate, and not associate with known drug users. Respondent was required  
14 to complete an approved controlled substance treatment program. On or about October 27, 2005,  
15 the court set aside Respondent's plea, and the matter was dismissed.

#### 16 **DISCIPLINARY CONSIDERATIONS**

17 19. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant  
18 to California Code of Regulations, title 16, section 1445, subdivision (b), Complainant alleges the  
19 following:

20 a. On or about December 8, 1997, in a criminal proceeding entitled *People of the*  
21 *State of California v. Patrick Allan Eubanks*, in Los Angeles County Superior Court, case number  
22 7VN03975, Respondent was convicted on his plea of nolo contendere of violating Vehicle Code  
23 section 23152, subdivision (a), driving under the influence, a misdemeanor. The court dismissed  
24 an additional count of violating Health and Safety Code section 11550, subdivision (a), under the  
25 influence of a controlled substance, pursuant to the plea agreement. As a result of the conviction,  
26 Respondent was granted 36 months summary probation, and ordered to serve 10 days in the Los  
27 Angeles County Jail, with credit for one day. Respondent was further ordered to complete 20  
28 days with the CalTrans work program, complete a three-month First Offender Alcohol and Other

1 Drug Education and Counseling Program, and pay fees, fines, and restitution in the amount of  
2 \$1,237.

3           b.     The circumstances that led to the conviction are that on or about midnight of  
4 September 25, 1997, patrol officers with the Los Angeles Police Department observed a vehicle,  
5 driven by Respondent, traveling at a high rate of speed and straddling lanes of traffic. After  
6 conducting an enforcement stop, the officers made contact with Respondent. The officers  
7 observed that Respondent displayed the objective symptoms of drug intoxication: an overall  
8 excited appearance, elevated pulse, slurred speech, lack of convergence of the eyes, impaired  
9 balance, and dilated pupils. Respondent had a slight odor of an alcoholic beverage on his breath.  
10 Respondent was arrested for driving under the influence of drugs and taken to the Van Nuys  
11 Station for a drug recognition examination (DRE). Respondent provided two breath samples  
12 which were negative for alcohol. Respondent's pupils were dilated under all lighting conditions,  
13 his pulse and blood pressure remained elevated, and he had an extreme case of dry mouth.  
14 Respondent admitted to officers that he had used "pot" the prior day, and cocaine the day before  
15 and approximately one hour before being pulled over. Respondent stated that he had started  
16 having problems with drug abuse after being employed by his current employer (a bar). The DRE  
17 determined that Respondent was under the combined influence of a central nervous system  
18 stimulant and cannabis. Respondent was also found to be operating a vehicle on a suspended  
19 driver's license.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 770256, issued to Patrick Allan Eubanks;
2. Ordering Patrick Allan Eubanks to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: October 15, 2012

*for* Stacie Bens  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

SD2012703897